

Exhibit C

Changes to Chapter 5.33 Goods and Services

1. **Amend Subsection 5.33.010.A Definitions as follows:**
 - A. The following definitions apply to the City of Portland's Purchasing Authority, Policies and Rules as contained in this Chapter.
 - 1.- 3. No changes.
 4. **Amendment:** Additions or deletions to or material changes to a City Contract.
 5. -38. No changes
 39. ~~PCC: The Code of the City of Portland, Oregon.~~
 - 40.- 68. No changes.

2. **Delete Section 5.33.060 Authority of Directors.**
Directors of Bureaus or Offices are authorized to:
 - A. No change
 - B. ~~Execute Contract amendments for Goods and Services Contracts covered by this Chapter:~~
 1. ~~Up to 25% of the original Contract Amount, regardless of the original Contract Amount;~~
 2. ~~More than 25% of the original Contract Amount, provided that the amended Contract Amount does not exceed \$500,000 and the Chief Procurement Officer concurs.~~
 - C. No change.
 - ~~D. The authority granted by this section regarding amendments is conditioned on the existence of an original valid Contract between the parties that was executed in conformance with City Code and State law.~~
 - E. No change.

3. **Amend Section 5.33.070 Purchasing Goods, Services and Public Improvements from City Employees.**
 - A. No change.
 - B. "Business with which a City employee is associated" means any business in which the City employee is a director, officer, or owner ~~or employee, or any corporation in which the City employee owns or has owned 10 percent or more of any class of stock at any point in the preceding calendar year.~~

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4. Add Section 5.33.085 Preference for Goods Fabricated or Processed Within State or Services Performed Within State.

Notwithstanding provisions of law requiring the City to award a contract to the lowest responsible bidder or best proposer or provider of a quotation, a contracting agency that uses public funds to procurement goods or services for a public use under ORS Chapter 279B may give preference to procuring goods that are fabricated or processed entirely within this state, or services that are performed entirely within this state.

A. If the goods or services cost is not more than 10 percent more than goods that are not fabricated or processed entirely within this state a preference may be given. If more than one bidder or proposer qualifies for the preference described in this subsection, the City may give a further preference to a qualifying bidder or proposer that resides in or is headquartered in this state.

B. The City may set a higher percentage than the percentage set forth above if the City, in a written determination to support the order, finds good cause to set the higher percentage and explains the City's reasons and evidence for the finding.

C. This section does not apply to emergency work, minor alterations, ordinary repairs or maintenance work for public improvements or to other construction contracts as described in ORS 279C.

5. Amend Subsection 5.33.220.D Special Procurements.

D. The City Council declares the following as classes of Special Procurements:

1.-5. No change.

6. Insurance Contracts: Contracts for insurance, ~~including Employee Benefit insurance,~~ may be Awarded directly to an insurer after the City obtains Proposals from an insurance consultant. The consultant shall be selected pursuant to PCC Chapter 5.68. Among the services to be provided by the consultant is the securing of competitive Proposals from insurance carriers for all coverages for which the insurance consultant is given responsibility and advice to the City about the costs and benefits of the various Proposals. The City may then negotiate or enter into the insurance Contract that appears most Advantageous to the City without advertisement or issuance of its own Request for Proposals.

7.-21. No change.

6. Amend Subsection 5.33.500.A Responsibility of Offerors.

A. Contracts shall be Awarded only to Responsible Offerors. Pursuant to ORS 279B.110, the City shall consider whether the Offeror has:

1. -3. No change

4. Qualified legally to Contract with the City. Procurement Services may determine that such an Offeror is not legally qualified if:

- a. The Offeror does not have a business license tax account with the City; or
- b. The Offeror failed to make payments required by Title 7 of the City Code and has failed to make appropriate payment arrangements with the ~~Bureau of Licenses~~ Revenue Bureau within seven (7) Days of the receipt of a Bid or Proposal, unless the City waives that requirement and decides to pursue collection through retention of Contract funds, or through other means.

5. -6. No change.

B. -C. No change.

7. Amend Subsection 5.33.710 Protests and Judicial Review of Sole-Source Procurements.

A.-B. No changes.

C. Required City Response. The City shall take the following actions, as appropriate:

1. -2. No changes.

3. If the protest was timely filed and provides the information required by PCC Section 5.33.710 B.2., the City shall issue a decision in Writing and provide that decision to the Affected Person within ~~seven (7) business days~~ a reasonable period of time unless a Written determination is made by the City that circumstances exist that require a shorter time limit.

4. No change.

D. -E. No changes.

8. Amend Subsection 5.33.720 Protests and Judicial Review of Multi-Tiered Solicitations.

A.-B. No changes.

C. Basis of Protest. An Affected Person may protest its exclusion from the Competitive Range or from subsequent stages of a Procurement only if:

1. -2. No changes.

3. In the case of a competitive request for proposal, the exercise of judgment used by the Evaluation Committee members in scoring written proposals and oral interviews, including the use of outside expertise, is not grounds for protest.

D- No change.

E. Required City Response. The City shall take the following actions, as appropriate:

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- 1. The City shall inform the Affected Person in Writing if the protest was not timely filed;
- 2. The City shall inform the Affected Person if it failed to meet the requirements of PCC-Section 5.33.720 D.2. and the reasons for that failure;
- 3. If the protest was timely filed and provides the information required by PCC Section 5.33.720 D.2., the City shall issue a decision in Writing and provide that decision to the Affected Person within seven (7) business days a reasonable period of time unless a Written determination is made by the City that circumstances exist that require a shorter time limit.
- 4. If the City denies the protest, it shall inform the Affected Person if the decision is final or whether the Chief Procurement Officer has decided to refer the protest to the Purchasing Board of Appeals or City Council.

F.-G. No changes.

9. **Amend Subsection 5.33.750 Protests of Other Violations.**

Any violation of ORS Chapter 279A or 279B, except 279B.400 to 279B.425, by the City, for which no administrative remedy is otherwise provided by this Code, is subject to the following:

A.-B. No changes.

C. Required City Response. The City shall take the following actions, as appropriate:

- 1. The City shall inform the Affected Person in Writing if the protest was not timely filed;
- 2. The City shall inform the Affected Person if it failed to meet the requirements of PCC Section 5.33.750 B.2. and the reasons for that failure;
- 3. If the protest was timely filed and provides the information required by PCC Section 5.33.750 B.2. above, the City shall issue a decision in Writing and provide that decision to the Affected Person within seven (7) business days a reasonable period of time unless a Written determination is made by the City that circumstances exist that require a shorter time limit.
- 4. If the City denies the protest, it shall inform the Affected Person if the decision is final or whether the Chief Procurement Officer has decided to refer the protest to the Purchasing Board of Appeals or City Council.

D.-E. No changes.

10. Amend Section 5.33.770 Purchasing Procurement Board of Appeals.

A. No changes.

B. Board Created. Pursuant to Portland City Charter Section 2-103, City Council hereby creates the Purchasing Procurement Board of Appeals for the purposes described above.

- C. Jurisdiction of Board. The ~~Purchasing~~ Procurement Board of Appeals shall hear and resolve protests and appeals arising from City decisions arising under this Chapter only when such matters are referred to it by the Chief Procurement Officer.
- D. Composition of Board.
 - 1. The ~~Purchasing~~ Procurement Board of Appeals shall consist of three members. A quorum shall consist of three members.
 - 2.-4. No changes.
- E.-H. No changes.

11. Amend Section 5.33.790 Appeal to Board.

- A. Time. Any request for hearing by the Board shall be received by the Chief Procurement Officer no more than seven (7) Days from the date of the Chief Procurement Officer's decision unless a different timeline is provided in the Solicitation Document. The request shall be delivered to Procurement Services, Attn: Chief Procurement Officer and marked "Request for Hearing by the ~~Purchasing~~ Procurement Board of Appeals."
- B. Contents. The request shall set forth the specific reasons for requesting a hearing by City Council. Only those matters that were raised with the Chief Procurement Officer and the ~~Purchasing~~ Procurement Board of Appeals shall be stated as grounds for appeal.
- C.-G. No changes.

12. Amend title to Section 5.33.900 Social Equity Fair Contracting and Employment Programs.

From time to time, the City may adopt programs designed to promote competition, enhance economic opportunity and stimulate hiring among all of Portland's citizens. When such programs are adopted, they shall be included or sufficiently referenced in the Solicitation and Contract documents so that prospective Offerors are aware of their requirements.

Changes to Chapter 5.34 Public Improvements and Construction Services

1. **Amend Subsection 5.34.010 Definitions**
 - A. The definitions contained in ~~PCC~~ Section 5.33.010 and ~~PCC~~ Section 5.33.140 are applicable to Chapter 5.34.
 1. “Change Order” means a written agreement between the City and Contractor changing the Contract.
 - 2.- 6. No changes.

2. **Amend Section 5.34.150 Competitive Bidding Requirement.**
The City shall solicit Bids for Public Improvement Contracts by Invitation to Bid ("ITB"), except:
 - A.-G. No changes.
 - H. Contracts governed by ORS 279A.100 and ~~PCC~~ Section 5.34.040 regarding affirmative action, and contracts identified in the Prime Contractor Development Program;
 - I.-J. No changes.

3. **Amend Section 5.34.340 Electronic Procurement.**
 - A. General. ~~The City may advertise Public Improvement Contracts Electronically if the Chief Procurement Officer finds that Electronic Advertisements are likely to be cost effective. However if the Public Improvement Contract has an estimated cost in excess of \$125,000 , the advertisement must be published in at least one trade newspaper of general statewide circulation, except in circumstances where the Chief Procurement Officer finds that Electronic Advertisements are likely to be cost effective.~~
 - B. -E. No changes.

4. **Amend Section 5.34.410 Bid or Proposal Security.**
 - A. No change.
 - B. **Requirement for Bid Security (Optional for Proposals).** Unless The City Council has exempted a Solicitation, or class of Solicitations, from Bid security pursuant to ORS 279C.390, the City shall require Bid security for its Solicitation of Bids for Public Improvements. This requirement applies only to Public Improvement Contracts with a value, estimated by the City, of more than ~~\$100,000~~ \$150,000. The Chief Procurement Officer nonetheless may require Bid security from any Offeror, or for any project, even if the City Council has exempted a class of Solicitations from Bid security if the Chief Procurement Officer believes it necessary to secure payment and performance. The Chief Procurement Officer may require Proposal Security in RFPs (~~s~~See ORS 279C.400(5)).

- C. No change.
5. **Amend Subsection 5.34.500.A Responsibility of Offerors.**
- A. No change
1. – 3. No changes.
4. Is legally qualified to Contract with the City, including, but not limited to, an EEO Certification and a current, valid, business license from the City. Procurement Services may determine that a Person is not legally qualified if:
- a. The Person does not have a business license with the City; or
- b. The Person failed to make payments required by Title 7 of the City Code and has failed to make appropriate payment arrangements with the ~~Bureau of Licenses~~ Revenue Bureau within seven (7) Days of the receipt of a Bid or Proposal, unless the City waives that requirement and decides to pursue collection through retention of Contract funds, or through other means.
5. -6. No changes.
- B. No change.
6. **Amend Section 5.34.510 Prequalification of Offerors.**
- A. The City of Portland requires prequalification of all prime construction contractors on public improvement contracts with an estimated value of \$250,000 or greater, per ORS 279C.430(1) which allows public agencies the option to adopt their own rules for mandatory prequalification of contractors desiring to bid for public improvement contracts let by that agency. The Chief Procurement Officer has the authority to require Prequalification for public improvement contracts under \$250,000. The City shall not consider a Bid from a Bidder that is not prequalified, if the City required Prequalification.
- AB ~~Prequalification Application Forms. Application forms may be obtained from the Chief Procurement Officer. Information required on the application form shall be supplied fully and completely, unless patently inapplicable, and the Person in whose name the application is submitted, or the Authorized Representative of the corporation or association submitting the application, shall verify the information before a notary. Any prospective Bidder shall supply further information or detail as the City may require to clarify a Prequalification application. All Prequalification applications shall be filed with or sent to the Chief Procurement Officer unless a Solicitation Document for a specific project otherwise provides.~~
- Contractors seeking to prequalify shall submit a City of Portland Prequalification application to Procurement Services. Within 30 days after receipt of a fully completed prequalification application, the City will evaluate the application as necessary to determine if the contractor is qualified in the classes of work requested. The determination shall be made in less than 30 days, if practicable, if the contractor requests

an early decision to allow the contractor as much time as possible to prepare a bid on a contract that has been advertised.

- ~~BC.~~ Standards for Prequalification. ~~Prequalification applications submitted without designation for a specific project shall be considered as general Prequalification applications and processed pursuant to ORS 279C.430. The City may require Prequalification of Bidders for specific projects on application forms prescribed by the City. The City shall indicate in the Solicitation Document if it will require Prequalification. Prequalification means the City conditions a Bidder's submission of a Bid upon the Bidder's Prequalification. The City shall not consider a Bid from a Bidder that is not Prequalified if the City required Prequalification. To qualify, a Bidder must demonstrate to the City's satisfaction, that they are a Responsible Bidder based on criteria set forth in ORS 279C.375 (3)(b) and Section 5.34.500. If the City determines the Bidder is qualified, notification shall be sent stating the Bidder's qualified bidding limits, classes of work and the validity period of the Bidder's prequalification.~~
- ~~C.~~ General Prequalification Limits. ~~All public improvement projects and painting projects estimated to cost more than \$100,000 require Prequalification. The Chief Procurement Officer has discretion to require Prequalification for projects under \$100,000 as provided in PCC Section 5.34.510 D.~~
- ~~D.~~ Special Prequalification. ~~A separate special Prequalification may be required for a specific project, as contained in the Solicitation Document, when the City determines that the project is of a size, Sscope or complexity that Sspecial Prequalification is required or such other circumstances exist, that in the opinion of the City, a Sspecial Prequalification would be of assistance in the selection of qualified contractors.~~
- ~~E.~~ Prequalification Presumed. ~~If a Bidder is currently Prequalified by either the Oregon Department of Transportation or the Oregon Department of Administrative Services to perform Contracts, the Bidder shall be rebuttably presumed qualified to perform the same similar Work for the City upon submission of proof of such Prequalification. If a Bidder submits proof of Prequalification, then the Bidder is rebuttably presumed qualified under ORS279C.435. Nothing contained in this paragraph shall waive the City requirements for Prequalification, the City's authority to require additional information or detail, or prior approval as otherwise set forth in this rule.~~
- ~~G.~~ Standards for Prequalification. ~~A Bidder may prequalify by demonstrating to the City's satisfaction that it is a Responsible Bidder. The Bidder shall demonstrate that it is a Responsible Bidder or Proposer based on the criteria set forth in Section 5.34.500.~~
- ~~HF.~~ Scope of Prequalification. ~~The Chief Procurement Officer shall determine whether the applicant for Prequalification shall be considered Prequalified for City Bids, and the extent of Prequalification if approved or impose any other restrictions which the Chief Procurement finds appropriate under the circumstances. The Chief Procurement Officer may limit the types of Work, materials or services on which Bids shall be accepted from the applicant, may restrict the size or cost of project Bids to be received by the City from the applicant, or may impose any other restrictions which the Chief Procurement Officer finds appropriate under the circumstances. Thereafter, if the Bidder has Prequalified,~~

Bids may be received from the Bidder only within the limitations and restrictions imposed by the Prequalification decision.

1. -2. No changes.

IG. Notice. If the City determines a Bidder's Prequalification is not approved in whole or in part, or is restricted or revoked, the City shall notify the Bidder, specify the reasons found under ORS 279C.375(3)(b) and Section 5.34.500, and inform the Bidder of the right to a hearing before the Chief Procurement Officer, per ORS 279C.450. ~~who~~ The Chief Procurement Officer may shall exercise the powers of the City Council for this purpose, or may ~~The Chief Procurement Officer has discretion, however,~~ to refer this matter to the Board of Appeals, per 5.34.750(C).

H. If the City has reasonable cause to believe there has been a substantial change in the conditions of a prequalified Bidder and that the Bidder is no longer qualified or is less qualified, the City may revoke or may revise and reissue the prequalification after reasonable notice to the prequalified contractor, per ORS 279C.430(4). The notice shall state the reasons found under ORS 279C.375 (3)(b) for revocation or revision of the prequalification of the Bidder and inform the Bidder of the right to a hearing under ORS 279C.450.

J. -J. No changes.

7. Amend Subsection 5.34.610 B Offer Evaluation and Award; Determination of Responsibility.

A. No change.

B. Determination of Responsibility. Offerors are required to demonstrate their ability to perform satisfactorily under a Contract. Before Awarding a Contract, the City must have information that indicates that the Offeror meets the standards of responsibility set forth in ORS 279.375C(3)(b). To be a Responsible Offeror, the City must determine that the Offeror:

1. -3 No change.

4. Is qualified legally to Contract with the City, including having a current City business license and EEO certification. The Procurement Services may determine that such a Person is not legally qualified if:

a. The Person does not have a business license with the City; or

b. The Person failed to make payments required by Title 7 of the City Code and has failed to make appropriate payment arrangements with the Bureau of Licenses Revenue Bureau within seven (7) Days of the receipt of a Bid or Proposal, unless the City waives that requirement and decides to pursue collection through retention of Contract funds, or through other means.

5. No change.

C.-I. No change.

8. Amend Section 5.34.690 Performance and Payment Security; Waiver.

A. Public Improvement Contracts. Unless the required performance bond is waived under ORS 279C.380(1)(a), excused in cases of Emergency under ORS 279C.380(4), or unless the City Council, acting as the Local Contract Review Board, exempts a Contract or classes of Contracts from the required performance bond and payment bond pursuant to ORS 279C.390, the Contractor shall execute and deliver to the City a performance bond and a separate payment bond each in a sum equal to the Contract Price for all Public Improvement Contracts. This requirement applies only to Public Improvement Contracts with a value, estimated by the City, of more than \$100,000 \$150,000. Notwithstanding any exemption, the Chief Procurement Officer may require a performance bond, or payment bond, or both, in the Chief Procurement Officer's sole discretion (~~see also, PCC~~ Section 5.34.915 regarding the separate public works bond).

B.-D. No Changes.

9. Amend Section 5.34.750 Review of Prequalification and Disqualification Decisions.

A. ~~The A. Bidder who has received notification of a Prequalification denial, revocation or revision of a Prequalification decision or a decision to disqualify a prospective Offeror and wishes to appeal the decision~~ must submit Written appeal to the City within three (3) business Days after receipt of the City's notice.

B.-C. No changes.

10. Amend Section 5.34.760 Purchasing Procurement Board of Appeals.

A. No change.

B. Board Created. Pursuant to Portland City Charter Section 2-103, City Council hereby creates the Purchasing Procurement Board of Appeals for the purposes described above.

C. Jurisdiction of Board. The Purchasing Procurement Board of Appeals shall hear and resolve protests and appeals arising from City decisions arising under this Chapter only when such matters are referred to it by the Chief Procurement Officer.

D. Composition of Board.

1. The Purchasing Procurement Board of Appeals shall consist of three members. A quorum shall consist of three members.

2.-4 No changes

E.-H. No changes.

11. Amend Section 5.34.780 Appeal to Board.

- A. No change.
- B. Contents. The request shall set forth the specific reasons for requesting a hearing by City Council. Only those matters that were raised with the Chief Procurement Officer and the Purchasing Procurement Board of Appeals shall be stated as grounds for appeal.

C.-G. No changes.

12. Amend Section 5.34.820 Use of Alternative Contracting Methods.

A.-B. No changes.

C. Post-Project Evaluation. ORS 279C.355 requires that the City prepare a formal post-project evaluation of Public Improvement projects in excess of \$100,000 for which the competitive bidding process was not used. The purpose of this evaluation is to determine whether it was actually in the City's best interest to use an Alternative Contracting Method. The evaluation must be delivered to ~~the City's Chief Procurement Officer, on behalf of the City Council~~ on behalf of the City's Chief Procurement Officer within 30 Days ~~of~~ after the date the City "accepts" the Public Improvement project, which event is typically defined in the Contract. The Chief Procurement Officer shall forward such reports to the City Council in a timely manner. In the absence of a definition of "acceptance", the later of the date of final payment or the date of final completion of the Work will govern. ORS 279C.355 describes the timing and content of this evaluation, with three required elements:

1.-3 No changes.

12. Amend Section 5.34.840 Competitive Proposals; General Procedures.

A.-C. No changes.

D. Evaluation Factors.

1.-3. No changes.

4. In Energy Savings Performance Contracting (ESPC) contracting, in addition to the factors set forth in ~~PCG~~ Subsection 5.33.840 D.1., 2. and 3., those factors may also include sample Technical Energy Audits from similar projects, sample M & V reports, financial statements and related information of the ESCO for a time period established in the RFP, financial statements and related information of joint ventures comprising the ESCO, the ESCO's capabilities and experience in performing energy baseline studies for facilities (independently or in cooperation with an independent third-party energy baseline consultant), past performance of the ESCO in meeting energy guarantee Contract levels, the specific Person that will provide the Energy Savings Guarantee to be offered by the ESCO, the ESCO's management plan for the project, information on the specific methods, techniques and equipment that the ESCO will use in the

performance of the Work under the ESPC, the ESCO's team members and consultants to be assigned to the project, the ESCO's experience in the Energy Savings Performance Contracting field, the ESCO's experience acting as the prime Contractor on previous ESPC projects (as opposed to a sub-contractor or consultant to a prime ESCO), the ESCO's vendor and product neutrality related to the development of ECMs, the ESCO's project history related to removal from an ESPC project or the inability or unwillingness of the ESCO to complete an ESPC project, the ESCO's M & V capabilities and experience (independently or in cooperation with an independent third-party M & V consultant), the ESCO's ability to explain the unique risks associated with ESPC projects and the assignment of risk in the particular project between the City and the ESCO, the ESCO's equipment performance guarantee policies and procedures, the ESCO's energy savings and cost savings guarantee policies and procedures, the ESCO's project cost guarantee policies and procedures, the ESCO's pricing methodologies, the price that the ESCO will charge for the Technical Energy Audit phase of the Work and the ESCO's fee structure for all phases of the ESPC.

E. No changes.

13. Amend Section 5.34.930 Social Equity Fair—Contracting and Employment Programs.

From time to time, the City may adopt programs designed to promote competition, enhance economic opportunity and stimulate hiring among all of Portland's citizens. When such programs are adopted, they shall be included or sufficiently referenced in the Solicitation and Contract Documents so that Persons desiring to enter into Contracts with the City are aware of their requirements.